
An Analysis and Evaluation of
Certificate of Need Regulation in Maryland

Inpatient Rehabilitation Hospital and Chronic Hospital Services

Response to Written Comments on the Staff Recommendation

MARYLAND HEALTH CARE COMMISSION

September 13, 2001

**An Analysis and Evaluation of
Certificate of Need Regulation in Maryland:
Acute Inpatient Rehabilitation Hospital and Chronic Hospital Services**

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I. Introduction

The Maryland Health Care Commission's working paper, titled *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Rehabilitation Hospital and Chronic Hospital Services* was developed as the first working paper in Phase II of the Certificate of Need ("CON") study examining major policy issues of the CON process, as required by House Bill 995 (1999). The working paper, in considering each of these two services separately, provided background information on acute inpatient rehabilitation hospital and chronic hospital services provided in Maryland, and summarized the following six alternative regulatory strategies to the current Certificate of Need Requirement to establish either of these services.

1.Rehabilitation Hospitals

- A. Option 1: Maintain Existing Certificate of Need Review Program Regulation for Rehabilitation Hospital Beds
- B. Option 2: Re-establish Need Thresholds for Rehabilitation Hospital Beds
- C. Option 3: Deregulate Rehabilitation Hospital Beds From Certificate of Need Review, with Approval by the Medicaid Program of Any New Rehabilitation Hospital Beds and Facilities Seeking Medicaid Reimbursement
- D. Option 4: Impose a Moratorium on New Rehabilitation Hospital Beds
- E. Option 5: Deregulation With Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care
- F. Option 6: Deregulation of Rehabilitation Hospital Beds From Certificate of Need

2.Chronic Hospitals

- A. Option 1: Maintain Existing Certificate of Need Review Program
- B. Option 2: Establish a Need Projection for Chronic Hospitals

- C. Option 3: Deregulation From Certificate of Need Review, With Approval by the Medicaid Program of any New Chronic Hospital Beds and Facilities Seeking Medicaid Reimbursement
- D. Option 4: Impose a Moratorium on New Chronic Hospital Beds
- E. Option 5: Deregulation With Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care
- F. Option 6: Deregulation of Chronic Hospital Beds From Certificate of Need Review

The Commission released this *Working Paper* at its May 17, 2001 meeting, and invited interested organizations and individuals to submit written comments by June 15, 2001. The Commission received comments from eight organizations. The Commission's staff evaluated the public comments that were received on the *Working Paper*, and determined that for Inpatient Rehabilitation Hospital Services seven organizations supported Option 1: Maintain existing CON review, and two supported Option 2: Re-establish need thresholds. One of the organizations supporting Option 2 had also written in support of Option 1. Of the comments received addressing chronic hospital services, all six supported Option 1: Maintain existing CON review.

On July 19, 2001, staff recommended that the Commission adopt as its recommendation to the General Assembly, regarding the CON requirement for new or expanded services, Option 1: Maintain existing Certificate of Need review for both acute inpatient rehabilitation services and chronic hospital services. The comments showed a strong consensus for a continuation of market monitoring through the CON program model.

Additionally, Staff recommended that the Commission strengthen its data collection so that the Commission can look further at need and quality, especially in terms of functional outcomes. A work group, established by the Commission, is reviewing the data set from a national reporting system for rehabilitation hospitals and units as well as the discharge abstract data set. This work group will identify specific rehabilitation data elements (such as: major impairment requiring rehabilitation) and a way of measuring functional status. The aim is to improve the data we have, and add to it.

Following the Commission's July 19, 2001 meeting, the full text of the Staff Report with its Recommendation was released to the public. The Commission provided a further opportunity for public comments which were due August 17, 2001, with Final Action by the Commission on the Recommendation scheduled for the September 13, 2001 Commission meeting.

Summary of Public Comments on Staff Recommendation

The Commission received written comments from MedStar Health (“MedStar”) commenting on behalf of its affiliated organizations which include, among others, Franklin Square Hospital Center, Good Samaritan Hospital, Harbor Hospital, and Union Memorial Hospital in Maryland, and Georgetown University Hospital, National Rehabilitation Hospital and Washington Hospital Center located in the District of Columbia. A copy of the comments is enclosed.

MedStar supports the Staff recommendation that the Maryland Health Care Commission adopt Option 1: Maintain existing Certificate of Need review program for both Acute Inpatient Rehabilitation Services and Chronic Hospital Services as its recommendation to the Maryland General Assembly regarding the CON requirement for new or expanded services. MedStar takes exception to the fact that the existing review program does not include the National Rehabilitation Hospital (“NRH”) in the inventory of facilities that serve Maryland residents, although NRH is among the larger providers of rehabilitation services to Maryland residents. MedStar further states that failure of the Commission to consider the capacity and use of NRH by Maryland residents is a major flaw in the current need methodology that can lead to sub-optimal need assessment and oversupply of rehabilitation services in the regions closest to the District of Columbia. MedStar Health concludes by urging the Commission in its recommendations to appropriately consider resources and facilities used by a substantial number of Marylanders when planning for rehabilitation needs of the State’s residents.

Staff Response

The Staff has given the above comments of MedStar Health careful consideration. Before presenting a final recommendation, the Staff believes that it is important to note the following:

On page 5, the *Working Paper: Rehabilitation Hospital and Chronic Hospital Services* states that, “[i]n addition to rehabilitation facilities located within the State, Maryland residents use major rehabilitation services located in adjacent states, including the National Rehabilitation Hospital in Washington, D.C.”

On page 32, the *Working Paper* notes that, in 1996, amendments to the *State Health Plan: Acute Inpatient Rehabilitation Services* at COMAR 10.24.09 deleted the methodology that was used to project need. That action was taken because uniform data on discharges from rehabilitation facilities in Maryland and the nation were not available. The source of the national data used in the methodology had ceased operation.

The 1996 amendments to the *State Health Plan* also included the adoption of occupancy rates as a measure of the efficient use of rehabilitation beds in each region of the state. The Commission uses the rates in determining whether a CON application for beds to provide acute inpatient rehabilitation services meets the necessary criteria for docketing or approval.

In a response to earlier comments on this subject, the staff mentioned particularly that the Commission has established a work group to improve the quality and use of data reported by rehabilitation facilities in Maryland. Further, the staff agreed that any method for assessing the future need for special rehabilitation hospitals or units in Maryland should consider the utilization of existing facilities, including specialized programs in contiguous areas that are accessible to and used by Maryland residents, and for which data are available.

The *State Health Plan* recognizes that a portion of Maryland's population achieves reasonable geographic access to specialized health care by using out-of-state services. It also describes important differences between Maryland's regulatory environment and that of contiguous states, including rate-setting and licensing provisions. As indicated in the *State Health Plan*, any formal arrangements to consider relevant data provided by out-of-state facilities should include a requirement to show evidence of compliance with applicable standards and data reporting regulations, to the extent permitted by the Commission's authority.

Staff Recommendation

The Staff again requests that the Commission adopt as its recommendation to the General Assembly that the Certificate of Need requirement for Inpatient Rehabilitation Hospital Services and Chronic Hospital Services be maintained and supported by enhanced data collection, to better understand the quality and effectiveness of services provided.

Attachment 1

**Written Public Comments Received on the
Staff Recommendation**